

# EL DORADO COUNTY GRAND JURY 2014-2015

## *THE PUBLIC DEFENDER IS DOING WELL UNDER THE CIRCUMSTANCES*

Case GJ-14-10

The El Dorado County District Attorney asked the Grand Jury to investigate changing the institution by which the County provides indigent criminal defense. The district attorney's office cited the possibility that the county could save money by this change.

### **BACKGROUND**

El Dorado County has a government run public defender's office to represent indigent defendants. In addition, there is an indigent defense panel to handle work overload and cases having conflict with office staff. The Public Defender has offices in Placerville and South Lake Tahoe. Total staff for the department is 14 attorneys, two investigators, and five office staff.

The district attorney's opponent in court while prosecuting the criminal law frequently is the public defender. Because of this natural competition, his request to explore changing the institution of the public defender appears somewhat suspect. There have been previous unsuccessful efforts to change El Dorado County away from the public defender system.

The alternative to the public defender system often is referred to as *contract defenders*, is used by several counties in California. El Dorado County's population is 29th largest in California and it's 2014-2015 budget for the public defender is about \$3.5 million. Yolo County also has a public defender system. It is California's 28th largest county, having a population approximately 20,000 greater than El Dorado County, with a 2014-2015 budget of about \$5.5 million.

The Grand Jury found several counties, only slightly larger in population, that have contract defenders. Based on this year's budget for contract defenders, Santa Cruz County spends about \$9 million, San Luis Obispo County spends about \$5 million, and Butte County spends about \$3 million. There is no norm that like-sized California counties save money using the contract defender system.

In addition to cost factors, various studies and testimony to the Grand Jury from those with experience working in many criminal justice jurisdictions, show that defendants often are represented more effectively by a government run public defender's office.

Government contracts generally pay contracted defender attorney firms either a set amount either per year or per standard case. However, contract defenders usually have a private clientele as well which often pays for representation by the hour. The contract structure creates an economic incentive to process an indigent case using as few hours as possible, leading to defendants being urged to *plead out* rather than go to trial. The concern is that such outcomes would have grave constitutional implications.

## **METHODOLOGY**

Given the speculative savings and possibility of encouraging less than adequate indigent defense by a change to a contract defense system, the Grand Jury undertook a comprehensive investigation of the work of our public defender's office. We believed that if the Public Defender is, in fact, delivering adequate criminal defense, then that would certainly outweigh any financial argument to change the system.

We found that there is no statistic by which criminal defense representation can be determined having been done adequately or well. Instead, the reputation among those who work in the criminal justice system is the only way to assess the effectiveness of any given office or practitioner of criminal defense.

The Grand Jury interviewed numerous participants within the criminal justice system, including prosecutors, criminal defense lawyers both inside and outside the public defender's office, and judges in El Dorado County.

## **DISCUSSION**

The many professionals interviewed said the public defender's office is doing a good job of defending indigent criminal defendants. All those asked said the office has a group of excellent attorneys. No one even suggested that a change in the system of delivering criminal defense services is needed because of problems with the current office.

However, there is discord within the current office. Approximately one-half of the attorneys have applications out for other employment. If half the attorney staff were to leave, it would create a representation crisis for this county's indigent defendants, at least in the short term.

The Board of Supervisors hired a new chief Public Defender, Teri Monterosso, in the latter half of 2013, after the retirement of her predecessor. At that time, the Chief Assistant Public Defender was a seasoned and well regarded trial lawyer with years of public defender service. He was a male near retirement age.

The Board of Supervisors' process for filling the Public Defender position was unique. It completely bypassed the Human Resources Department, contributing to a Grand Jury investigation that the Board of Supervisors does not respect their practices. See Grand Jury Report *Board of Supervisors Neglects Human Resources*, Case GJ-14-07.

A three person interview panel was asked to return the eight highest evaluated public defender applicants to the Board. The Board picked three finalists from those eight without any further input from the panel and without any formal input from within the county's criminal law community. The three finalists picked were women. Ms. Monterosso had most recently been a member of the county counsel's office with prior experience in the public defender's office both here and in other counties. However, she did not possess significant actual felony trial experience.

The Chief Assistant, although one of the eight brought to the board, did not receive an interview from the board for the public defender job.

Teri Monterosso has begun her tenure as Public Defender in an almost no-win position. Many of the public defender office attorneys felt that hiring Ms. Monterosso symbolized disrespect for the office and the Chief Assistant. Some outright hostility was shown by the Chief Assistant and other attorneys. Most have applied for other jobs, citing her lack of significant trial experience and her managerial style and decisions.

However, Ms. Monterosso has persevered well during her two and one half years. She has gained the trust of at least half of the office, kept her office within its budget each year, and maintained the office's excellent reputation for criminal defense representation in the county.

### **FINDINGS**

1. The public defender's office is doing a good job of representing indigent criminal defendants.
2. Approximately one-half of the attorneys have applications out for other employment.
3. Public Defender Teri Monterosso has maintained the office's excellent representation for criminal defendants in the county.

### **RECOMMENDATIONS**

1. The current public defender system should be retained.
2. The current Public Defender, Terri Monterosso, should be retained by the Board of Supervisors, but her continued appointment should be reviewed in two years to see if she continues to hold the office together while maintaining its effectiveness delivering the county's indigent criminal defense.
3. Whenever a new public defender is needed, the Board of Supervisors should employ a formal system incorporating the views of the very well regarded judges and lawyers involved in the criminal justice system of El Dorado County. The Board should then task this blue ribbon committee or committees with picking only finalists for the position who are highly qualified to effectively lead the office to at least adequate, if not excellent, defense of indigent criminal defendants. Thus the Board will not be forced to make decisions in an area where it cannot possibly have any actual knowledge let alone expertise. At the very least, the Board should get the approval of the county's criminal law attorneys and judges that the proposed candidate is qualified, if not highly qualified to be the Chief Public Defender.

## RESPONSES

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury  
Presiding Judge of the El Dorado County Superior Court  
1354 Johnson Blvd.  
South Lake Tahoe, CA 96150

This Report has been provided to the El Dorado County Public Defender and El Dorado County Board of Supervisors.

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a *Word* or *PDF* file to facilitate the economical and timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at: [courtadmin@eldoradocourt.org](mailto:courtadmin@eldoradocourt.org)